

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

KEVIN L. MARSHALL v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Wayne County
No. 13150 Robert Holloway, Judge**

No. M2003-02234-CCA-R3-HC - Filed October 7, 2004

The Defendant, Kevin L. Marshall, appeals from the trial court's denial of his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Kevin L. Marshall, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; P. Robin Dixon, Jr., Assistant Attorney General; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On April 18, 2002, the Defendant pleaded guilty to and was convicted of leaving the scene of an accident involving a fatality. Pursuant to his plea agreement, he was sentenced to a term of four years. On July 29, 2003, the Defendant filed a petition for habeas corpus relief, in which he alleged that he could not have legally entered into the plea agreement because he was not "involved in the actual accident, nor was he the proximate cause of said accident." The trial court dismissed the petition. This appeal followed.

The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W.2d 157, 163 (Tenn. 1993). Habeas corpus relief is available only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that his sentence has expired. Id. at 164.

The essence of the Defendant's claim is that, even though he pleaded guilty in open court, the evidence which would have been presented had his case gone to trial would not be sufficient to establish his guilt. This claim is not cognizable in a habeas corpus proceeding. Even if the petition is viewed as a petition for post-conviction relief, it appears that the applicable statute of limitations seeking post-conviction relief has expired. This court concludes that the petition for habeas corpus relief was properly dismissed.

Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Tennessee Court of Criminal Appeals.

DAVID H. WELLES, JUDGE